HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM : HON'BLE MR. S.R.NAYAK, C.J. AND
HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (PIL) NO.4500 OF 2006

Petitioner : Gram Panchayat Bade Mudpar, Block and Tahsil Malkharoda, District Janjgir Champa (CG), through its Sarpanch Neera Bai W/o Shri Hari Charan Satnami, aged about 52 years, resident of Village Bade Mudpar, Block and Tahsil Malkharoda, District Janjgir Champa (CG)

versus

Respondents :

1. State of Chhattisgarh, through the Secretary, School Education Department, Mantralay, D.K.S. Building, Raipur, Tahsil and District Raipur (CG)
2. Collector, Janjgir Champa, District Janjgir Champa (CG)
3. District Project Co-coordinator, Rajiv Gandhi Shiksha Mission, Janjgir Champa, Tahsil and District Janjgir Champa (CG)
4. Block Education Officer, Malkharoda, District Janjgir Champa (CG)
5. Gram Panchayat Chhote Mudpar, through its Sarpanch, Gram Panchayat Chhote Mudpar, Block and Tahsil Malkharoda District Janjgir Champa (CG)
6. Shri Amrit Lal Sahu, resident of Village Chhote Mudpar, Block and Tahsil Malkharoda District Janjgir Champa (CG)

Present : Mr. Awadh Tripathi, counsel for the petitioner.
Mr. Prashant Mishra, Additional Advocate General with Mr. Utkarsh Verma, Deputy Government Advocate for respondents No.1, 2 and 4.
Mr. A.S.Kachhawaha, counsel for respondent No.3.
None appears for other respondents.

ORAL ORDER
(Passed on 14th of September, 2006)

The following order of the Court was passed by

S.R.Nayak, C.J. :

What is assailed in this writ petition filed under Article 226 of the Constitution of India is the administrative action dated 31-7-2006 (Annexure P-7) of the third respondent shifting the upgraded middle school from Bade Mudpar to Chhote Mudpar. This action is assailed by the petitioner – Gram Panchayat on two grounds. The first ground is that the action is tainted by *mala fide*. The second ground is that the action is arbitrary and unreasonable and violates Article 14 postulates.

2. With regard to the first ground in para 5.16 of the petition, it is stated thus –

> "5.16 : That the respondent no.6 who is resident of Village Chhote Mudpar is the close relative of the Education Minister and the said respondent in collusion with the Education Minister succeeded in opening of the Middle School at Chhote Mudpar by modifying the order dated 14-6-2006 by which the respondent Collector accorded sanction for upgrading the Primary School Bade Mudpar to Middle School."

3. At the time of hearing, learned counsel appearing for the petitioner – Gram Panchayat would submit that the allegation made in the above paragraph is not against the fifth respondent – Gram Panchayat, but against the sixth respondent. We permit him to correct the mistake.

4. The first allegation, as could be seen, is as vague as it could be. Secondly, a serious allegation is made against the Education Minister, but, quite curiously the Education Minister is not made a party in person. The petitioner has utterly failed to lay any factual matrix to bring home the charge of *mala fide* against the Education Minister or against any officer working in that Ministry.

5. The second ground is also not well-founded. The judicial review of policy decisions has been circumscribed and is very much limited by a catena of decisions of the Hon'ble Supreme Court. Unless it is shown in a given case that the policy decision is *ex facie*, arbitrary and unreasonable, the Court should not step-in under Article 226 and interfere with such policy decision. In our considered opinion, the decision taken by the third respondent for shifting the upgraded middle school from Village Bade Mudpar to Chhote Mudpar is essentially a policy decision taken keeping in mind the needs and requirements of the school-going children and their parents. This Court in the garb of exercising the power conferred under Article 226 of the Constitution cannot sit in judgment over the policy decision taken by the third respondent.

6. Be that as it may, in the return filed by the third respondent as well as the State Government and other State authorities, it is pointed out that there are two Primary Schools within the radius of 3½ kilometers

of Bade Mudpar. Furthermore, it is stated by the third respondent in the return that the population of Chhote Mudpar is approximately 2,500 and as per the norms of the Sarva Shiksha Abhiyan of Rajiv Gandhi Shiksha Mission, a school has to be established for a group of 40 students and that at present approximately 34 students are studying in the middle school at Chhote Mudpar and as per the norms of the Rajiv Gandhi Shiksha Mission, the strength of the Shiksha Mission is fulfilled. We are satisfied that the impugned action could not be condemned either as arbitrary, unreasonable nor as tainted by *mala fide*.

7. The writ petition is dismissed being devoid of merit. No costs. However, we make it clear that this order shall not come in the way of the third respondent and other authorities of the State sympathetically considering the request of the petitioner – Gram Panchayat to have one upgraded middle school at Bade Mudpar also. It is stated that such proposal is under consideration of the Mission Director, Rajiv Gandhi Shiksha Mission, Raipur. It is trusted that the Mission Director, Rajiv Gandhi Shiksha Mission, Raipur would sympathetically consider the request of the petitioner – Gram Panchayat for establishment of an upgraded middle school at Bade Mudpar also if it is feasible and needed.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Gopal